

Agreement Between the Department of Natural Resources and The Friends of Mead-McMillan Association, Inc.

This agreement (Agreement) between the Department of Natural Resources (hereinafter referred to as the "DNR"), acting through the Secretary, and the Friends of Mead-McMillan Association, Inc. (hereinafter referred to as "FOM-MAI"), acting through the President of its Board of Directors or the Board's designee.

Witnesseth:

WHEREAS, it is the purpose of the DNR to preserve, interpret, and manage its properties for the benefit, education, and enjoyment of the people of the state; and

WHEREAS, the DNR desires to extend its program and services at the Mead & McMillan State Wildlife Areas (hereinafter referred to as "the property"); and

WHEREAS, FOM-MAI has incorporated to assist the DNR in extending its program and services at the property.

NOW, THEREFORE, pursuant to authority contained in Chapter 27, Wis. Stats., and in consideration of the mutual benefits which will accrue to the DNR and FOM-MAI, the parties agree as follows:

1. **AUTHORIZATION** The DNR authorize FOM-MAI to provide, and FOM-MAI agrees to provide when able, the hereinafter described services to the visiting public for a period of three years commencing on the day following the ratification of this Agreement by the DNR. The Agreement shall automatically renew for additional consecutive three-year periods, unless reasonable notice of cancellation is given by either party before the date of renewal. The DNR or FOM-MAI reserve the right to terminate this Agreement or any part thereof, at any time upon 30 days written notice without the necessity of any legal process, after holding a meeting prior to the termination setting forth the reasons for termination. An evident and distinct separation shall be maintained between the management and decision-making activities of FOM-MAI and those of DNR. All steps shall be taken to avoid even an appearance that the DNR directs the management or decision-making process of FOM-MAI. The management and operation of FOM-MAI is subject to all applicable Wisconsin Statutes and the Wisconsin Administrative Code.
2. **DNR RESPONSIBILITIES** The DNR shall allow FOM-MAI to use facilities at the property which are designated for the sale of educational and interpretive items for the benefit of the visiting public. The property manager shall have sole discretion in deciding which and how much display/sales area is used for FOM-MAI items. Exhibit A & B show the location of such facilities.
 - A. **Sales Items** The DNR shall cooperate with FOM-MAI in the planning and design of merchandise appropriate for sale by FOM-MAI at the facilities provided by the DNR.
 - B. **Facilities**
 - i. The DNR shall at its sole discretion provide FOM-MAI with offices and storage space and with such sales and other facilities as may be deemed necessary or desirable by the DNR. The DNR reserves the right to relocate or remove any such facilities in order to meet needs of the DNR upon reasonable notice. All facilities

shall be subject to the right of the DNR to make such surveys and inspections as it deems necessary.

- ii. The DNR reserves the right to design and construct any new facilities, and shall allow FOM- MAI to review and comment on any plans therefore.
 - iii. The DNR shall provide FOM-MAI with incidental utility services at each assigned facility, including water, local phone calls, copies up to (100 or 200) per month, electricity, heat, and air conditioning, to the extent these utilities are required for the operation of the building for governmental purposes. All other utilities shall be provided FOM-MAI on a reimbursable basis.
 - iv. The DNR shall provide all general maintenance and repair services for the state-owned buildings.
 - v. FOM-MAI shall be given special consideration in scheduling activities outside the normal building use schedule.
- C. The DNR shall designate the property superintendent or the superintendent's designee as liaison or property coordinator with FOM-MAI.
 - D. Monies donated by FOM-MAI to the DNR shall be expended to support the mission and activities of the property.
 - E. The DNR shall promote FOM-MAI in publications and announcements where DNR deems appropriate.

3. FRIENDS RESPONSIBILITIES

- A. Exclusive Support FOM-MAI shall limit its official activities to the support of the property. FOM-MAI may use facilities and equipment within the property at the sole discretion of DNR for its programs and activities for the benefit of the visiting public.
- B. Organization
 - i. FOM-MAI's bylaws shall comply with the requirements of the State of Wisconsin. Nonprofit status must be maintained in accordance with state laws and FOM-MAI shall make all such documents available for inspection, at the request of DNR, documents demonstrating nonprofit status. This Agreement shall automatically terminate if nonprofit status is lost, or if the bylaws are amended in such a way as to alter the intent of this Agreement.
 - ii. DNR employees may be members of FOM-MAI, but shall not serve on the board of directors or as treasurer. DNR employees shall not represent FOM-MAI in any matter between FOM-MAI and the DNR.
 - iii. The role of the property coordinator is to represent the interests of the DNR and to provide cooperative assistance to FOM-MAI. The coordinator's responsibility to FOM-MAI shall be limited to providing assistance to FOM-MAI activities and serving as liaison between the DNR and FOM-MAI.
- C. Interpretive Activities Interpretive activities engaged in by FOM-MAI must meet DNR standards and be approved by the superintendent.
- D. Sales Items
 - i. FOM-MAI shall not sell any item that has not been approved by the property superintendent or designee. Whenever possible and appropriate, FOM-MAI shall sell Wisconsin-made products. FOM-MAI shall allow publications to be reviewed by the DNR for editorial and design quality.
 - ii. FOM-MAI is not by this Agreement granted the right to sell items, the sale of which would infringe on applicable contract rights of a concessionaire, if any.
 - iii. FOM-MAI shall maintain a high standard of quality as determined by the property superintendent in all items produced or sold.

- iv. FOM-MAI shall sell items at or near market value of similar goods or services in the area of the property and such prices shall be approved in advance by the DNR.
 - v. FOM-MAI shall display the sales items in good taste and in keeping with the general design and decor of the property.
- E. Fund-raising Fund-raising events and activities sponsored by FOM-MAI shall be approved by the property superintendent or superintendent's designee.
- F. Facilities
 - i. FOM-MAI may redesign and renovate existing sales facilities as necessary, including renovation of display structures, furnishing, equipment, signing, display lighting, and lighting in the immediate area of the facility, provided that all plans are approved in advance by the DNR.
 - ii. FOM-MAI shall keep the sales facility clean and presentable throughout the work day.
 - iii. FOM-MAI shall exercise reasonable care to prevent damage to any DNR property used by it during its operation and shall, insofar as possible, protect all such property.
 - iv. The erection of signs and advertising or display materials relating to FOM-MAI is not allowed unless authorized by DNR. All signs, advertising or display materials, and all publications, stationery, and other promotional material issued or used exclusively by FOM-MAI shall be paid for by FOM-MAI. All these materials shall clearly identify the property as a property of the State of Wisconsin Department of Natural Resources.
- G. Records and Accounting
 - i. FOM-MAI shall conduct its fiscal operations in accordance with accepted business practices, using purchase orders, receipts, invoices, and inventory records.
 - ii. FOM-MAI shall submit to DNR a complete financial report detailing, as a minimum, all income and expenditures to the superintendent, annually within 90 days following the end of FOM-MAI's fiscal year (July 1-June 30). The report is not required to include a list of donors or itemized donations. The report shall be accompanied by a written summary of FOM-MAI activities for the year.
 - iii. The DNR may review and/or audit the records of FOM-MAI at any time during the term of this Agreement with reasonable notice.
 - iv. FOM-MAI shall maintain a checking account in its name, and shall deposit proceeds from sales, donations and other revenue in the account at least once each month wherein there is revenue. Only the treasurer or the (president's or treasurer's) designee may make the deposits. All withdrawals and expenditures of funds shall require the signatures of either the Treasurer or President after approval by a Board quorum.
 - v. FOM-MAI shall provide notice of its meetings in a manner that is reasonably likely to apprise interested persons.
- H. Personnel
 - i. FOM-MAI shall provide such personnel as are reasonably necessary to operate the sales facilities as indicated by the level of gross sales. These personnel may include, as necessary, a business office staff, facility managers, and sales clerks. Otherwise, DNR personnel may offer sales items to the public as an incidental supplement to their regular duties.
 - ii. FOM-MAI shall designate one member or employee who is authorized to act as liaison with the DNR.

- iii. All FOM-MAI employees and volunteers involved in visitor contact shall be oriented in the property's visitor service programs and shall be approved by the superintendent before assuming such responsibilities.
- iv. FOM-MAI personnel are not DNR employees and are not authorized to undertake any DNR function or activity on behalf of the DNR beyond routine visitor information services and participation in interpretive programs. FOM-MAI employees and members shall not engage in activities that would reasonably lead the visiting public to conclude that they are DNR employees. No FOM-MAI employee or member shall wear a DNR uniform. All FOM-MAI employees and volunteers involved in public contact shall wear some easily observable and readily identifiable indicia of FOM-MAI affiliation while at the property on FOM-MAI business. If the DNR specifies volunteer uniforms or indicia, FOM-MAI employees and volunteers shall wear them while on duty.
- v. Where applicable, FOM-MAI shall furnish full worker's compensation coverage for its employees and shall comply with all social security and withholding tax laws and rules. A person claiming that the coverage is not required under Chapter 102, Wis. Stats., shall upon request, provide the basis for such opinion in writing to the DNR. When required to furnish full worker's compensation coverage for its employees, FOM-MAI shall provide a copy of the insurance certificate to the property superintendent. Any changes in insurance coverage shall require immediate notification to DNR.
- vi. Nondiscrimination In connection with the performance of work under this Agreement, FOM-MAI agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01(5), sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, FOM-MAI further agrees to take affirmative action to ensure equal employment opportunities. If the annual work force is less than 10 employees, FOM-MAI is exempted from this requirement.

I. Approvals

- i. Hours of operation, rates and prices, standards of service, and merchandise to be sold shall be subject to the approval of the property superintendent.
- ii. FOM-MAI may at any time make a written request to the property superintendent for such necessary approvals. Failure to disapprove within 30 days of receipt of such written request shall be deemed to constitute DNR approval.

4. INDEMNIFICATION AND INSURANCE

- A. General FOM-MAI shall not be required to purchase liability insurance as long as it is engaged only in the sale of books, brochures, and other non-food items related to natural history, or in assisting DNR interpretive programs, or in assisting DNR in minor grounds maintenance projects.
- B. Exception In the event of FOM-MAI sponsorship of events, programs, and projects beyond the scope of those noted in Paragraph A, FOM-MAI shall purchase public liability insurance to be effective during a period of time specified by DNR to provide adequate protection of the state's interests. The liability insurance shall name the State of Wisconsin, Department of Natural Resources and its employees, and FOM-MAI, as insureds in the minimum amount of \$300,000 single limit per occurrence including

- coverage of \$300,000 for bodily and personal injury and \$25,000 for property damage so that the DNR shall be protected from any liability arising out of the activities of FOM-MAI. FOM-MAI shall furnish the DNR with a copy of the insurance policy or a certificate of insurance, to be placed in a file with the Agreement, at least two weeks before FOM-MAI begins such events, programs, or projects. FOM-MAI shall indemnify the DNR against any cause of action, claim, damage, cost of expense, including reasonable attorney's fees, arising from its management or operation, or from any breach or default by FOM-MAI in the performance of this Agreement, or from any negligence of FOM-MAI during such events, programs, or projects. If any action or proceeding is brought against the DNR by reason of any such cause or claim, FOM-MAI, upon notice from the DNR, shall defend the DNR by counsel satisfactory to the DNR. If insurance is required, this Agreement shall be conditioned on the DNR's approval of the insurance policy. Any notice of cancellation of the insurance policy shall require immediate notice to the DNR.
- C. Copyright Infringement FOM-MAI, in selling the articles described herein, guarantees that the sale or use of those articles shall not infringe on any copyright. FOM-MAI covenants that it shall at its own expense defend every suit which shall be brought against the State of Wisconsin (provided that FOM-MAI is promptly notified of such suit, and all papers therein are delivered to FOM-MAI for any alleged infringement of any copyright by reason of the sale or use of such articles sold or distributed by FOM-MAI, and agrees that FOM-MAI shall pay all costs, damages, and profits recoverable in any such suit.
5. ASSIGNMENT No transfer or assignment of this Agreement or of any part thereof or interest therein, directly or indirectly, voluntary or involuntary, shall be made unless such transfer or assignment is first approved in writing by the DNR Secretary or the Secretary's authorized representative.
6. APPROPRIATIONS Nothing herein contained shall be construed as binding the DNR to expend any sum in excess of appropriations made by the Legislature, or administratively allocated, for the purpose of the Agreement, or to involve the DNR in any contract or other obligation for the future expenditure of money in excess of such appropriations or allocation.
7. MISCELLANEOUS
- A. The rights and benefits conferred by this Agreement shall be subject to the laws of the State of Wisconsin governing the DNR and the rules and regulations promulgated thereunder, whether now in force or hereafter enacted or provided; and the mention of specific restrictions, conditions, and stipulations herein shall not be construed as in any way impairing the general powers of supervision, regulation, and control by the DNR.
- B. Both parties agree to keep this Agreement in force when signed by both parties hereto until terminated by mutual agreement or at the option of either party upon three months notice given in writing upon any anniversary date hereof. DNR and FOM-MAI shall review the Agreement every three years and at such other times as may be required by either party on 30 days written notice.
- C. DNR or FOM-MAI may terminate this Agreement upon 30 days written notice to the other party if, after reasonable effort by said party to correct a default, it is determined that conditions still exist contrary to this Agreement. In the event of a termination, FOM-MAI's net assets shall become the property of the property's Gifts and Donations Account. This Agreement is effective between FOM-MAI and DNR with regard to, and only to, the following specified sites, which are collectively referred to throughout this Agreement as Mead-McMillan State Wildlife Areas or "the property", to wit:
- i. Mead-McMillan State Wildlife Areas

IN WITNESS WHEREOF, the Friends of Mead-McMillan Association, Inc., has caused this Agreement to be executed this _____ day of _____, 2____.

Friends of Mead-McMillan Association, Inc.

By: _____
President, Board of Directors

Attested: _____

Position: _____

IN WITNESS WHEREOF, the Department of Natural Resources has caused this Agreement to be ratified this _____ day of _____, 2____.

Department of Natural Resources

By: _____
Secretary